

PROVIDER REIMBURSEMENT REVIEW BOARD HEARING DECISION

2004-D1

PROVIDER -

Home Care PRN,
Home Care PRN 96 Allowable Home
Office Expenses,
Home Care PRN 96 Interest Expense
Grp.

Provider Nos. Various

vs.

INTERMEDIARY -

Blue Cross and Blue Shield Association/
Associated Hospital Services

DATE OF HEARING-

September 4, 2003

Cost Reporting Periods Ended -

December 31, 1995, 1996

CASE NOS. 01-1470, 01-1539G
& 01-1534G

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Issue

Whether the Board has jurisdiction to determine which entity is the proper payee under the terms of a settlement agreement between the Providers and the Intermediary?

The Providers are represented by Carolyn Jacoby Gabbay, Esq. of Nixon Peabody, LLC Boston, Massachusetts. The Intermediary is represented by Eileen Bradley, Esq. of Blue Cross and Blue Shield Association, Washington, D.C.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Procedural History

At the Providers' request, the Board closed these cases on December 27, 2001, upon the parties representations that a settlement has been reached. The Providers requested that the cases be reinstated because the Intermediary had not issued revised NPRs to the Providers under the terms of the settlement agreement. In their reinstatement request, the Providers stated that they intended to seek enforcement of the parties' settlement agreement according to its terms including, without limitation, that payment be made to the Providers. The Providers also requested, however, that all issues in the appeal be reinstated.

The Board reinstated the cases and issued new Notices of Hearing identifying the issues for adjudication as those previously briefed in the parties' respective position papers. The Providers responded by stating that the Board's statement of the issue was incorrect and should be:

Is the Provider entitled to receive the payment specified in the settlement agreement executed by the parties hereto in December 2001. . .and did the Fiscal Intermediary improperly fail to make payment as so specified.

Factual Background

Home Care PRN participated in the Medicare program until August 31, 1996, under several provider numbers including the two at issue here—22-7307 and 22-7214. In July of 1996 Home Care PRN and an entity named Pathways Healthcare Services created a new entity called New Pathways Healthcare Services (New Pathways). Home Care PRN transferred its provider agreement to New Pathways and new provider numbers were issued by appending an "A" to the previous provider numbers. New Pathways entered bankruptcy and the company was dissolved and liquidated.

The parties to this appeal entered into a settlement agreement resolving the issues in dispute. However, payment was not made to the Providers in these cases. Rather, the

Intermediary issued a series of NPRs in which the payment was applied against the overpayments to New Pathways. Home Care PRN is requesting that the amount of payment due under the terms of the settlement agreement be paid to it, not New Pathways.

INTERMEDIARY'S POSITION

The Intermediary contends that the Board lacks jurisdiction over the appeals because there is no final determination with which the provider is dissatisfied nor is the amount of reimbursement in dispute. Under 42 U.S.C. § 1395oo, the Board has the power to affirm, modify or reverse the final determination of reimbursement. In this case, there is no dispute as to the amount of reimbursement because it was determined by the settlement agreement. Rather, the Intermediary contends this case involves a dispute as to the identity of the proper payee. The Intermediary does not believe the Board's jurisdiction extends to this type of controversy.

PROVIDERS POSITION

The Providers state that they are seeking two rulings from the Board. The rulings would confirm that:

- \$1,520,206 . . . paid by Home Care on the September 2000 NPRs was overstated by the amount determined pursuant to the Settlement Agreement, i.e., \$1,173,593; and
- the Fiscal Intermediary, as required by the Settlement Agreement and governing law, should pay \$1,173,593-with interest-to Home Care PRN.¹

The Providers contend that the settlement agreement required payment be made to them and that the agreement made it clear that the Intermediary knew of the transfer of the provider numbers to a new entity.

The Providers point out that under 42 U.S.C. § 1395oo(a), the Board has jurisdiction over appeals by providers who are dissatisfied with the final determination of the Intermediary as to the amount of total reimbursement due a provider. They agree that since the Intermediary has determined that Home Care PRN is not entitled to reimbursement, the dispute falls within the Board's jurisdiction.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law, regulations and guidelines, the parties contentions and evidence presented, finds and concludes that it lacks jurisdiction over the question of which entity is the proper payee under the terms of a settlement agreement between the Providers and the Intermediary.

¹ Provider's Jurisdictional Brief at 2-3.

The Providers are requesting that the Board determine that the terms of the settlement agreement are correct, i.e. the Providers are entitled to \$1,173,593, and that the Providers identified in the hearing requests in these appeals are to be paid rather than a successor entity. The Board's jurisdiction is limited to deciding whether the Medicare reimbursement determination of the intermediary should be affirmed, modified or reversed. See 42 U.S.C. § 1395oo(a). The amount of reimbursement claimed by the Providers is undisputed. The only dispute is which entity is entitled to receive the settlement proceeds. The Board cannot enforce payment under a settlement agreement or determine who should be paid. These are contract/payment disputes outside the jurisdiction of the Board.

DECISION AND ORDER:

The Board finds that it lacks jurisdiction over the issue under appeal and hereby dismisses the cases

Review of this determination is available under the provisions of 42 U.S.C. § 1395oo(f)(1) and 42 C.F.R. §§ 405.1875 and 405.1877.

Board Members Participating

Suzanne Cochran, Esq.
Martin W. Hoover, Jr., Esq.
Gary B. Blodgett, DDS
Elaine Crews Powell, CPA

Date of Decision: October 14, 2003

FOR THE BOARD:

Suzanne Cochran, Esq.
Chairman